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COMMITTEE AGAINST TORTURE

Nineteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 304th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 November 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.304/Add.1.

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Argentina (CAT/C/34/Add.5; HRI/CORE/1/Add.74) (continued)

At the invitation of the Chairman, Mr. Benítez, Mr. Chelia and Ms. López (Argentina) resumed their places at the Committee table.

1. The CHAIRMAN invited the Argentine delegation to reply to the questions put by the members of the Committee.

2. Mr. BENÍTEZ (Argentina) said that his delegation would first address the questions to which it could give an immediate reply. Those requiring additional information had been transmitted to the Argentine authorities, and the replies would be communicated to the Committee as they became available during the session.

3. One member of the Committee had inquired what rules were applicable to foreigners whose documentation was not in order and who had committed no crime. In principle, the authorities avoided expulsions whenever possible. In general, such measures were taken only when there was prior agreement with the State of origin. In that case, they ensured that all their obligations under international human rights instruments were complied with. In cases of extradition, when there was no prior agreement, the Government ensured that the international norms were applied as rigorously as was the case when an agreement was in force.

4. On the question whether the sentences imposed by the courts in some cases of torture had been too lenient, he pointed out that such cases often presented judges with a moral dilemma. In order for a person accused of torture to be found guilty, the injuries caused must be sufficiently serious for the crime committed not to be treatable merely as "unlawful coercion", and there must be sufficient evidence to prove that the suspect had committed the acts of which he was accused. Unfortunately, the Argentine delegation was not in a position to explain why a given court had delivered one judgement rather than another. All it could affirm was that the Government was aware that much remained to be done. As was the case throughout the world, the members of the police forces and prison administration inhabited a sort of microcosm in which they eventually acquired a very specific mentality, as a result of which unfortunate mistakes were made. No general inference could be drawn from that state of affairs, for it also had positive aspects. For instance, reference should be made to the many occasions when the police had made a significant contribution to investigations into cases of torture. It was true to say that some police officers were not above suspicion, and it was for the authorities to get to the bottom of any breach of the rules of professional conduct. The press played an extremely important role in that regard. The articles it devoted to cases of torture were admittedly sometimes exaggerated in tone, but they made it possible to increase public awareness and compelled the authorities to undertake the necessary investigations. But the very fact that the press was able to denounce the practice of torture ultimately proved that,

in spite of abuses, the institution as a whole remained sound. With regard to the Bulacio case, he said that his delegation was attempting to obtain fuller details of what had actually happened. It was highly likely that Police Superintendent Espósito had been convicted for being unable to control his junior officers. Torture was apparently not one of the charges that had been brought against him.

5. Mr. CHELIA (Argentina), supplementing the information provided by Mr. Benítez, said that article 144, paragraph 5, of the Penal Code, which dealt with the responsibilities of senior police officials, provided that a police officer could be held responsible for an act of torture committed by a junior officer only if he had shown negligence.

6. Mr. BENÍTEZ (Argentina), replying to a question concerning the detention of persons under the procedure for conducting identity checks, said that deprivation of liberty was regulated by the Code of Criminal Procedure, under the terms of which the police were empowered, inter alia, to arrest a person caught in the act of committing a crime. After 6 hours, the person concerned must be brought before a judge, who could extend the detention by 48 hours, and the maximum period for which he could be held in police custody was 72 hours. However, it sometimes happened that the police resorted to ruses to arrest or detain a person.

7. One member of the Committee had cited information alleging that 50,000 persons were currently detained in Buenos Aires, and had inquired whether any such persons were held incommunicado or in police custody for prolonged periods. It was also alleged that between 1993 and 1996 there had been more than 1,200 victims of police brutality in the Federal Capital and its adjacent districts. His delegation regretted that it was unable to provide further details on those questions.

8. According to the information he had received from the Argentine authorities, there was indeed a special register of cases of torture. That document, which was kept by the Attorney-General of the Nation, listed all the complaints lodged with the criminal courts and enabled the course of the proceedings to be monitored. However, the mechanism had proved ineffective, for the number of complaints of ill-treatment lodged with the criminal courts had fallen constantly. Under article 43 of the 1994 Constitution, it was now possible to lodge an application for habeas corpus in the case of an infringement of individual freedoms, or an amparo application when other rights recognized under the Constitution were at issue. Inter alia, an application for habeas corpus enabled a person who had been subjected to torture or a detainee who considered that his conditions of detention had deteriorated to have his rights restored much more swiftly than if he had lodged an ordinary complaint.

9. As for the powers of the Office of the Under-Secretary for Human and Social Rights, the Ombudsman (Defensor del Pueblo) and the Government Procurator for the Prison System, he said that the initial report of Argentina had contained detailed information on those institutions. The question put by the members of the Committee had been transmitted to the Argentine authorities and a reply should soon be forthcoming. His delegation would thus confine itself to adding that the Office of the Under-Secretary for Human and Social

Rights attached to the Ministry of the Interior was principally responsible for promoting the application of the provisions of the international human rights instruments in Argentina. The post of Government Procurator for the Prison System had been established only recently. The incumbent was responsible for monitoring the situation in prisons. Administration of such establishments undeniably posed enormous problems in Argentina, and the authorities were constantly trying to improve the situation. With regard to the training of doctors in the prohibition of torture, he said that the Faculty of Medicine of the University of Buenos Aires had included study of the international rules concerning torture in its forensic medicine programme. Unfortunately, at times when massive violations of human rights were committed, torture was often practised with the complicity of doctors, in breach of the Hippocratic oath. Argentina had been no exception to that rule. After the restoration of democracy doctors had been prosecuted, but there had been insufficient evidence to convict them. Human rights training seminars were held regularly in the police academies in cooperation with the Office of the High Commissioner for Human Rights. Thus, a course to initiate public order personnel to human rights had been held in 1994. In 1995, federal police officers and police instructors had attended a retraining course. In 1996, an initial training course in human rights had been organized for police officials in the province of Chaco. Lastly, in 1997, another course had been organized for senior police officers in the Patagonia region. In that connection, Argentina had just renewed its cooperation agreement with the relevant United Nations services.

10. To dispel the concerns of some members of the Committee, it should be stressed that any confession obtained under torture was null and void. As for the derogations allowing a person to be arrested without a court order or to be held in pre-trial detention (see paragraph 37 of the third periodic report), he said that judges generally applied the circumstantial evidence principle, a legal rule whereby during the investigation the judge was able to incarcerate a person once he considered that there was sufficient evidence to obtain his conviction. As for incommunicado detention, it was an extreme measure that a judge was sometimes obliged to take in order to ensure that the investigation of a case proceeded smoothly. That being said, no record was kept containing the names of persons placed in incommunicado detention, as it was a transitional measure in the proceedings. Incommunicado detention did not deprive the detainee of the right to communicate with his lawyer in private.

11. With regard to the decision whether to allow the accused to remain free or to place him in pre-trial detention, it was the judge who, having considered all the relevant factors, decided to release the accused without closing the case. The release was conditional. Further details would be submitted in writing at a later date. Under the Code of Criminal Procedure, every day spent in pre-trial detention equated to two days' imprisonment if the accused was convicted. In both the capital and the provinces, the judge often decided to extend pre-trial detention in order to ensure the presence of the accused at his trial. In any case, the Code of Criminal Procedure guaranteed the rights of accused persons. The vast majority of trials ended in a conviction. All judges received specific training in the field of human rights. Compensation was awarded at the end of a criminal indemnification action, which was quite independent of the criminal proceedings. An

application for habeas corpus was possible if the modalities for deprivation of liberty were made more rigorous, and such an application offered an alternative to submission of a complaint of torture or ill-treatment. Given the speed with which the judge was required to act, an application for habeas corpus was in fact a more effective remedy. In no case could confessions obtained under torture be deemed admissible. He confessed that he was not familiar with the case of 25 asylum seekers reported to have been held in a police station in September 1997. It was possible that they were nationals of neighbouring countries who had entered Argentina illegally. It was certainly not customary to hold asylum seekers in police cells. Specific inquiries would be necessary in order to identify the persons concerned.

12. On police training, Argentina had elaborated a very ambitious plan for teaching human rights. That being said, the State could not ignore the question of available resources which, although substantial, were nonetheless limited. The Argentine Government and the Office of the High Commissioner for Human Rights were cooperating in that area.

13. On rehabilitation programmes for victims of torture, he undertook to forward fuller information on the question to the Committee.

14. Ms. LÓPEZ (Argentina), replying to a group of questions on accused persons' rights, said that under article 184 of the Code of Criminal Procedure, the Federal Police were obliged to initiate certain measures to ensure that policemen did not exceed their powers, which were very circumscribed. Police officers were only permitted to request a suspect to give his personal particulars - confirmation of the right not to make a statement. Similarly, steps were taken to ensure that the police were thoroughly familiar with the principles governing the use of force and firearms. Police custody was limited in principle to 10 hours. Exceptions were possible provided they were in the public interest and applied with absolute respect for human rights, as set forth, inter alia, in the International Covenant on Civil and Political Rights. Overall, those provisions all militated in favour of presumption of the innocence of the accused, an approach conducive to respect for human rights. The conditions for detention of persons on remand further reinforced that presumption of innocence: they were never held in the same places of detention as convicted prisoners. Similarly, juveniles were always separated from adults.

15. Court procedures had been greatly accelerated in recent years, although there was still a considerable backlog attributable to the prevailing economic circumstances.

16. Mr. BENÍTEZ (Argentina) said that there was no centre specializing in medical care for victims of ill-treatment.

17. Mr. CHELIA (Argentina) gave details of the amounts paid in compensation to persons who had been victims of ill-treatment during the military dictatorship. Under the Act of 30 October 1986, a life pension had been paid to 4,600 beneficiaries since 1 November 1986. Under various decrees, a total of $800 million had been paid in damages, in addition to the pension payments. The sum involved represented a sizeable item in the State budget.

18. Mr. BENÍTEZ (Argentina), on the question of automatic application of the Convention's provisions, said that merely by virtue of the fact that the Convention had been ratified, no additional provision was necessary to secure its automatic execution. With regard to the jurisdiction of the various human rights bodies, it should be remembered that Argentina was a federal State and that under articles 5 and 123 of the Constitution each province appointed its own officials and judges. However, the Constitution was the supreme law of the nation and international treaties ranked higher than any domestic laws of the provinces.

19. As for the organization of the various structures dealing with human rights, each province appointed its own officials and judges and enacted its own rules in accordance with constitutional guarantees. Ratified international human rights treaties had a higher authority than decisions of Congress. The authorities of each province were obliged to comply with them, regardless of the provisions of their internal laws and provincial constitutions. Administration of the ordinary system of justice in the territory of the province was the responsibility of the provincial Government, which was entrusted with application of the various national codes, national laws, human rights treaties and constitutional principles to persons over whom its jurisdiction was exercised. At the national level, the Supreme Court had jurisdiction over all matters governed by the Constitution and domestic law, other than those coming under the jurisdiction of the provincial courts. Two human rights centres had been established in the Ministries of the Interior and Foreign Affairs. Each was an Under-Secretariat, with a director who was appointed by the President of the Republic and could be replaced if there was a change of government. The basic function of the Ministry of the Interior's Office of the Under-Secretary for Human and Social Rights was to defend human rights in Argentina. It received complaints from individuals, gave advice to petitioners, and transmitted cases of violations to the competent national authorities. It took part in the drafting of legislation and in the work of the congressional committee responsible for human rights. An institutional programme had been set up to facilitate relations with public and private national organizations and foreign organizations active in the field of human rights. The Federal Council of Human Rights provided liaison between the Federal State and the provincial States. The Office of the Under-Secretary had also launched a historical reparation programme to compensate persons who had been victims of the military courts before the restoration of democracy in 1983 and the rightful successors of individuals who had disappeared. The National Commission for the Right to an Identity tried to trace children who had disappeared and to identify those who had been separated from their parents. The National Commission on the Disappearance of Persons kept up-to-date records in that area. There was a programme devoted to the rights of the child. An institute to promote human rights in general had been set up in cooperation with the Office of the United Nations High Commissioner for Human Rights, to provide documentation, information and training services. The second Under-Secretary's Office, attached to the Ministry of Foreign Affairs, dealt with human rights and women's rights at the international level. Its activities had already been referred to. It participated in the study on harmonization of legislation with Argentina's international commitments. It also had a hand in preparing the periodic reports submitted to the various treaty bodies.

20. At the domestic executive level, in 1993 a post of Government Procurator for the Prison System had been created. The Procurator had the rank of State Secretary and was appointed by the President of the Republic for a renewable four-year term. His basic functions were to protect the human rights of detainees and the human rights set forth in international instruments and domestic law. He took instructions from no authority. His mandate resembled the presidential mandate in some respects, but was not affected by changes of Government. It enabled him to make frequent visits to all national and federal prisons. He could be seized of any act or omission likely to infringe the rights of detainees and was obliged to bring a complaint before the criminal justice system in cases of violation of those rights. He made recommendations to the Ministry of Justice, which the Ministry could then transform into decisions.

21. There were parliamentary committees with special legislative competence in human rights matters. In the Senate, representatives of the provinces and the Federal Capital sat together on a human rights committee. The Chamber of Deputies had created two committees to deal with all parliamentary issues relating to human rights.

22. A post of Ombudsman had been established in 1993. That official exercised his functions independently and was required to protect the rights of individuals and the community in respect of acts and omissions of the national public administration. He was appointed by Congress by qualified majority vote. Changes of Government had no effect on the duration of his mandate, which was for a five-year period, renewable for a further five years.

23. One member of the committee had asked who could request compensation for an act of torture. It was of course the victims and their rightful heirs who could bring an action, but on an individual rather than a collective basis.

24. With regard to states of siege and applications for habeas corpus, it went without saying that a state of siege in no way suspended the exercise of the remedy of habeas corpus. The question of the consequences of the amnesty law had already been dealt with in the previous report.

25. His delegation unfortunately had no information concerning the case referred to by Mr. Burns, who had spoken in that context of "a strong police culture of violence". The situation in Latin America had its own defining characteristics. When Governor of the Province of Buenos Aires, he had been able to gauge for himself the difficulty of organising a police force in an urban environment of that type, and of maintaining valid internal relations. Every effort must be made to cooperate with police officials, but it was an ongoing struggle in which there were as many failures as successes.

26. One member of the Committee had referred to cases reported by Amnesty International. Without wishing to denigrate Amnesty International, which was an extremely valuable organization, he wondered whether all the complaints submitted to it were equally justifiable and well-founded. Fuller information had been requested from the competent ministries.

27. As for the relationship between provincial and national legislation, the Federal Constitution was built around delegation of powers to the provinces. The administration of justice was one of the functions devolved to the provinces, although the various codes were applied at the national level. On the question of compensation in one specific case, he said that as the Inter-American Court of Human Rights was currently seized of the matter, he was unable to comment on confidential proceedings.

The Argentine delegation withdrew.

The public part of the meeting rose at 4.50 p.m.